

Commonwealth of Massachusetts

County of Middlesex

The Superior Court

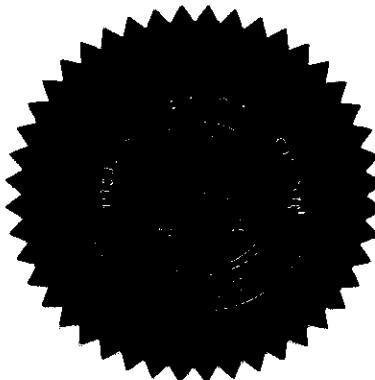
Commonwealth of Massachusetts
County of Middlesex
Superior Court

Commonwealth of Massachusetts
County of Middlesex
Superior Court

Commonwealth of Massachusetts
County of Middlesex
Superior Court

I, Michael Brennan, Assistant Clerk of the Superior Court of the Commonwealth of Massachusetts within and for said County of Middlesex, do certify that the papers hereto annexed are true pleadings in case No. **MICV2004-00329** entered in the Superior Court on **01/27/2004**.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said Superior Court,
at said Lowell
this 24th day of February, in the year of our Lord 2004



Michael M. Brennan
Assistant Clerk of the Courts

COPY

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

EDWARD A. McCARTHY,

Plaintiff,

v.

McLANE COMPANY, INC. and
CONSTRUCTION MANAGEMENT
TECHNOLOGY,

Defendants.

3

CIVIL ACTION
NO.

04-10335 RWZ

MAGISTRATE JUDGE

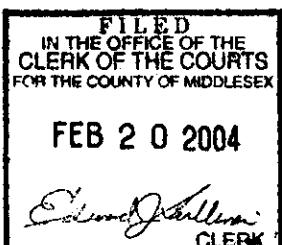
Cohen

NOTICE OF REMOVAL

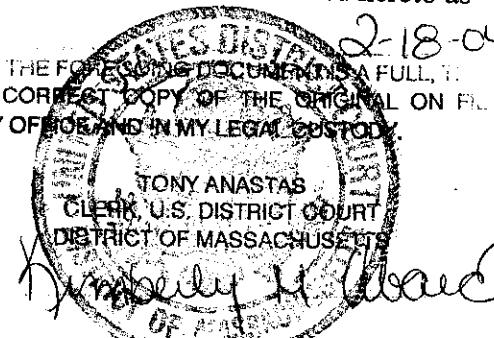
TO: (1) The Honorable Judges of the United States District Court for the District of Massachusetts and (2) George A. Malliaros, Esq., 1794 Bridge Street, Suite 22B, Dracut, MA 01826.

1. The Petitioner, McLane Company, Inc. ("McLane"), respectfully shows, upon information and belief, that it is one of the named defendants in the above-entitled civil action brought by the Plaintiff, Edward A. McCarthy ("McCarthy"), in the Middlesex Superior Court Department, Middlesex County, Massachusetts, Civil Action No. MICO 2004-00329-L2 (the "Civil Action").

2. On or about January 27, 2004, the Civil Action was commenced in the aforesaid Middlesex Superior Court Department, and Petitioner was served with the Summons, Complaint, Statement of Damages and Tracking Order in this action, copies of which are attached hereto as Exhibit "A," on February 6, 2004.



2-18-04
THE FOREGOING DOCUMENT IS A FULL, FAIR
AND CORRECT COPY OF THE ORIGINAL ON FILE
IN MY OFFICE AND IN MY LEGAL CUSTODY.



3. Petitioner was also served, on the same date, with the Plaintiff's First Set of Interrogatories to the Defendant, McLane Company, Inc., **Exhibit B** hereto, and the Plaintiff's First Request for Production of Documents to the Defendant, McLane Company, Inc., **Exhibit C** hereto.

4. Upon information and belief, no further proceedings have been had in the Civil Action, no other party has answered or appeared, and the time of Petitioner within which to file a notice of removal has not expired.

5. Jurisdiction. Based on the allegations contained in the Complaint, the above-entitled action is a civil suit which may be removed to this Court by the Petitioner pursuant to 28 U.S.C. §§ 1332(a) and 1441(a) on the basis of diversity of citizenship of the parties. More specifically, the plaintiff, McCarthy, is a resident of Massachusetts, Complaint, par. 1, while the Petitioner, defendant McLane, is a citizen of Texas. Complaint, par. 2. Defendant Construction Management Techonology ("CMT"), who has not yet appeared in this action, is also a citizen of Texas. Complaint, par. 3. Thus, there is a complete diversity of citizenship (Massachusetts – Texas) of the parties for purposes of 28 U.S.C. § 1332(a). The amount of medical and special damages alleged by the plaintiff, not including his demand for pain and suffering, is at least \$146,214. *See Statement of Damages.* Diversity jurisdiction therefore exists pursuant to 28 U.S.C. § 1332(a), and this action is removable pursuant to 28 U.S.C. § 1441(a).

6. Venue. Petitioner desires to remove this action to the district court of the United States for the district in which the action is now pending, to wit, to the District of Massachusetts (Eastern Section). 28 U.S.C. §1446(a).

7. After the filing of this Notice of Removal of this action to the United States District Court for the District of Massachusetts, (a) written notice of the filing of this Notice will be given to the attorney for the Plaintiff as provided by law, (b) a certified copy of this notice will be filed with

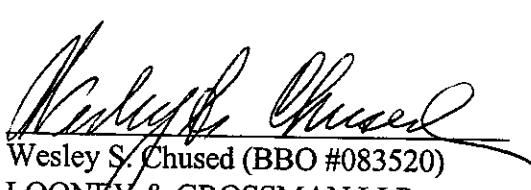
the Clerk of the Middlesex Superior Court, Middlesex County, Massachusetts, and (c) certified copies of all pleadings on file in said Middlesex Superior Court Department, Civil Action No. MICO 2004-00329-L2 will be filed with this Court.

8. Petitioner has a good and sufficient defense to the Plaintiffs' claims in this action.
9. No previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, Petitioner McLane Company, Inc. prays that this action be removed from the Middlesex Superior Court Department, Middlesex County, Massachusetts to the United States District Court for the District of Massachusetts.

McLANE COMPANY, INC.
By its attorney,

February 18, 2004

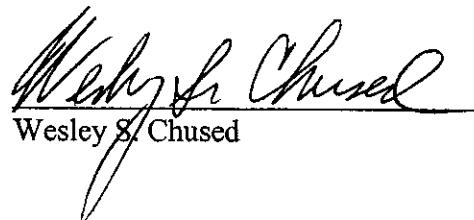

Wesley S. Chused (BBO #083520)
LOONEY & GROSSMAN LLP
101 Arch Street
Boston, MA 02110
(617) 951-2800

CERTIFICATE OF SERVICE

I hereby certify that I on February 18, 2004 served a copy of the foregoing pleading upon all parties hereto by mailing copies thereof, via first class mail, postage prepaid, properly addressed to:

George A. Malliaros, Esq.
1794 Bridge Street, Suite 22B
Dracut, MA 01826

Construction Management Technology
15280 Addison Road, #300
Addison, TX 75001


Wesley S. Chused

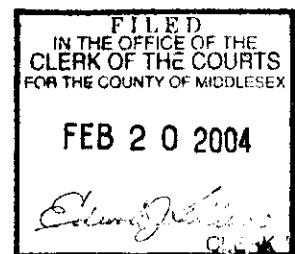
COPY

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPT.

EDWARD A. McCARTHY,)
v.)
McLANE COMPANY, INC. and)
CONSTRUCTION MANAGEMENT)
TECHNOLOGY,)
Defendants.)
CIVIL ACTION
NO. MICO 2004-00329-L2



**NOTICE OF FILING NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. §1446(d)**

TO: (1) Clerk of Court, Middlesex Superior Court Department, 360 Gorham Street, Lowell, Massachusetts 01852; (2) George A. Malliaros, Esq., 1794 Bridge Street, Suite 22B, Dracut, MA 01826; and (3) Construction Management Technology, 15280 Addison Road, #300, Addison, TX 75001:

Please take notice that a Notice of Removal, removing the within action, Civil Action No. MICO 2004-00329-L2, from the Middlesex Superior Court Department, Middlesex County, Massachusetts to the United States District Court for the District of Massachusetts, a certified copy of which is attached hereto, was duly filed in the Office of the Clerk of the United States District Court for the District of Massachusetts, on February 18, 2004 and assigned Civil Action No. 04-10335-RWZ.

COMMONWEALTH OF MASSACHUSETTS

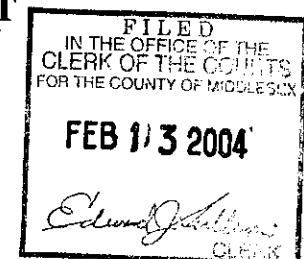
Middlesex, ss.

Superior Court Department
Docket No. MICV2004-00329

EDWARD A. McCARTHY,)
Plaintiff)
vs.)
McLANE COMPANY, INC. and)
CONSTRUCTION MANAGEMENT)
TECHNOLOGY,)
Defendants)

2

AFFIDAVIT



I, George A. Malliaros, do depose and say as follows:

On January 30, 2004, I mailed by Certified Mail, Return Receipt Requested, copies of the Summons, Complaint and Jury Demand, Statement of Damages, Civil Action Cover Sheet, Tracking Order-F Track, Interrogatories and Request for Production of Documents to the Defendants, at their last known addresses, as follows:

McLane Company, Inc.
4747 McLane Parkway
Temple, TX 76503-6115

Construction Management Technology
15280 Addison Road, Suite 300
Addison, TX 75001

The original Return Receipt cards are attached hereto.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY
THIS 12TH DAY OF FEBRUARY, 2004.

GEORGE A. MALLIAROS
ATTORNEY AT LAW
1794 BRIDGE STREET
SUITE #22B
DRACUT, MA 01826

(978) 452-6641

Litigation/McCarthy

George A. Malliaros, Esquire
1794 Bridge Street, Suite 22B
Dracut, MA 01826
Tel: (978) 452-6641
BBO#: 315940

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

McLane Co., Inc.
4747 McLane P.W.
Temple, TX 76503-
6115

2. Article Number (Copy from service lab

PS Form 3811, July 1999
102595-00-M-0852

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY	
A. Received by (Please Print Clearly)	B. Date of Delivery
<i>McLane Co., Inc.</i>	
C. Signature	<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee
<i>SQ</i>	
D. Is delivery address same as address below: If YES, enter delivery address below:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

3. Service Type	
<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input checked="" type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.
4. Restricted Delivery? (Extra Fee)	<input type="checkbox"/> Yes

COMPLETE THIS SECTION	
A. Received by (Please Print Clearly)	B. Date of Delivery
<i>McLane Co., Inc.</i>	
C. Signature	<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee
<i>SQ</i>	
D. Is delivery address same as address below: If YES, enter delivery address below:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

McLane Co., Inc.
4747 McLane P.W.
Temple, TX 76503-
6115

2. Article Number (Copy from service lab
PS Form 3811, July 1999
102595-00-M-0852

Domestic Return Receipt

TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED: —
TORT — MOTOR VEHICLE TORT — CONTRACT —
EQUITABLE RELIEF — OTHER

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX....., ss
[seal]

SUPERIOR COURT
DEPARTMENT
OF THE
TRIAL COURT
CIVIL ACTION

No. MCV2004-00329-L2

Edward A. McCarthy....., Plaintiff(s)

v.

McLane Company, Inc. and
Construction Management
Technology....., Defendant(s)

SUMMONS

To the above-named Defendant: McLane Company, Inc.

You are hereby summoned and required to serve upon George A. Malliaros, Esquire.....
..... plaintiff's attorney, whose address is 1794 Bridge Street, Suite
#22B, Dracut, MA 01826....., an answer to the complaint which is herewith
served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you
fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also
required to file your answer to the complaint in the office of the Clerk of this court at 360 Gorham Street,
Lowell, MA 01852..... either before service upon plaintiff's attorney or within a
reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may
have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's
claim or you will thereafter be barred from making such claim in any other action.

Suzanne V. DelVecchio
Witness,....., Esquire, at Cambridge, MA

the 30th..... day of January.....
....., in the year of our Lord Two Thousand Four.....



Clerk

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on January 30, ~~xx2004~~, I served a copy of the within summons, together with a copy of the complaint in this action, upon the within-named defendant, in the following manner (See Mass. R. Civ. P. 4 (d) (1-5)):

..... by mailing, Summons, Complaint, Tracking Order-F Track, Civil Action Cover Sheet, Statement of Damages, Interrogatories and Request for Production of Documents, Certified Mail/Return Receipt Requested, postage prepaid, to last known address: McLane Company, Inc., 4747 McLane Parkway, Temple, TX 76503-6115.

Dated: 02/10/04 George A. Malliaros, Esquire
..... Attorney for Plaintiff, Edward A. McCarthy

N.B. TO PROCESS SERVER:

**PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS
BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.**

(01/30/04)

(.....)

(.....)

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX....., ss.
SUPERIOR COURT
DEPARTMENT
OF THE
TRIAL COURT
CIVIL ACTION
No. MICV2004-000329-L2

Edward A. McCarthy....., Plff.

v.
McLane Company, Inc. and
Construction Management....., Deft.
Technology

SUMMONS
(Mass. R. Civ. P. 4)

TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED: —
TORT — MOTOR VEHICLE TORT — CONTRACT —
EQUITABLE RELIEF — OTHER

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX....., ss
[seal]

SUPERIOR COURT
DEPARTMENT
OF THE
TRIAL COURT
CIVIL ACTION
No. MCV2004-00329-L2

Edward A. McCarthy....., Plaintiff(s)

v.
McLane Company, Inc. and
Construction Management
Technology....., Defendant(s)

SUMMONS

To the above-named Defendant: Construction Management Technology

You are hereby summoned and required to serve upon George A. Malliaros, Esquire.....

..... plaintiff's attorney, whose address is 1794 Bridge Street, Suite #22B, Dracut, MA 01826....., an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at 360 Gorham Street, Lowell, MA 01852..... either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Suzanne V. DelVecchio, Esquire, at Cambridge, MA.....
the 30th..... day of January.....
....., in the year of our Lord Two Thousand Four.....



Edward J. Sullivan
Clerk

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on January 30, 04, I served a copy of the within summons, together with a copy of the complaint in this action, upon the within-named defendant, in the following manner (See Mass. R. Civ. P. 4 (d) (1-5)): *& Stmt. of Dmgs/Cvl. Actn
Cv. Sheet*
By mailing Summons, Complaint, Tracking Order-F Track, Interrogatories & Request for Prod. - Certified Mail/Return Receipt Requested, postage prepaid, to last known address: Construction Management Technology 15280 Addison Road, Suite 100 Addison, TX 75001

Dated: 02/10/04 George A. Malliaros, Esquire
Attorney for Plaintiff, Edward A. McCarthy

N.B. TO PROCESS SERVER:

**PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX
ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.**

(01/30/04)
(.....)
(.....)

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX....., ss.
SUPERIOR COURT
DEPARTMENT
OF THE
TRIAL COURT
CIVIL ACTION
No. MCV2004-00329-L2

Edward A. McCarthy....., Plff.

v.
McLane Company, Inc. and
Construction Management....., Deft.
Technology.....

SUMMONS
(Mass. R. Civ. P. 4)

22. The Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 21 as if fully set forth herein.
23. The Defendant, McLane, is and at all times herein mentioned was, the registered owner of a parcel of land, referred to as the McLane Warehouse Conversion, located at 111 Constitution Blvd., Franklin, Massachusetts.
24. The Defendant, CMT, is and at all times herein mentioned was, the general contractor overseeing construction at the McLane Warehouse Conversion.
25. The Defendant, CMT, subcontracted with Bay State Industrial Welding ("Bay State"), which is located at 10 Flagstone Dr., Hudson, New Hampshire, for work to be done at the McLane Warehouse Conversion.
26. At all times herein mentioned, the Plaintiff was employed by said Bay State as a pipefitter.
27. At all times herein mentioned, the Plaintiff was working in his capacity as a pipefitter for Bay State, on location at the McLane Warehouse Conversion.
28. The facilities at the McLane Warehouse Conversion where the Plaintiff worked included an outdoor parking area and enclosed garages, accessed through garage doors.
29. On March 9, 2001, and for a long period of time prior thereto, the Defendant, CMT, carelessly and negligently permitted the unnatural accumulation of large amounts of snow and ice in said outdoor parking area, such that the accumulation constituted a foreseeable hazard to said workers.
30. Prior to March 9, 2001, Bill Fuller, an employee of Bay State, who was working in the same parking lot, complained to the head of Defendant, CMT, about the dangerous icy conditions in the parking lot.
31. Despite said warnings, the Defendant, CMT, failed to treat or remove the buildup of ice in the area where the Plaintiff, and other Bay State employees, were working.

GEORGE A. MALLIAROS
ATTORNEY AT LAW
1794 BRIDGE STREET
SUITE #22B
DRACUT, MA 01826

(978) 452-6641

32. On March 9, 2001, at approximately 8:30 a.m., the Plaintiff was working in said parking lot, transferring supplies and equipment to the garage, when he slipped on ice and fell violently to the ground, landing on his back.

33. As a direct and proximate result of the carelessness and negligence of the Defendant, CMT, the Plaintiff suffered serious bodily injuries, including a herniated disk at L4-L5.

34. Because of said injuries, the Plaintiff suffered great pain and suffering. The Plaintiff is informed and believes and upon such information and belief alleges that said injuries are permanent in their nature.

35. In order to properly treat said injuries, it was necessary to employ physicians.

36. The Plaintiff is informed and believes that he may incur further expenses in the future for the treatment of said injuries, the exact amount of which is unknown at this time.

37. At all times herein mentioned, the Defendant, CMT, as general contractor, owed a duty to provide a safe workplace environment for the subcontractors, agents, and servants.

38. The Defendant, CMT, breached its said duty to the Plaintiff by allowing a dangerous amount of snow and ice to accumulate on said areas where subcontractors were working.

39. The Defendant, CMT, knew or reasonably should have known, that the unnatural accumulation of large amounts of snow and ice on said areas could result in injuries to workers passing on said areas.

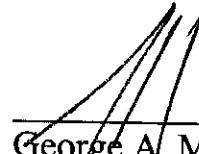
40. The Defendant, CMT, was negligent in allowing the unnatural accumulation of snow and ice. Such wrongful and negligent conduct was the direct and proximate cause of the injuries incurred by the Plaintiff.

WHEREFORE, the Plaintiff, Edward A. McCarthy, demands a judgment against the Defendant, CMT, plus costs and such other relief as this court may deem just and proper.

GEORGE A. MALLIAROS
ATTORNEY AT LAW
1794 BRIDGE STREET
SUITE #22B
DRACUT, MA 01826

(978) 452-6641

The Plaintiff,
Edward A. McCarthy,
By his attorney,



George A. Malliaros
BBO#: 315940
1794 Bridge Street, Suite 22B
Dracut, MA 01826
(978) 452-6641

January 26, 2004

Complaint 1-15-04

GEORGE A. MALLIAROS
ATTORNEY AT LAW
1794 BRIDGE STREET
SUITE #22B
DRACUT, MA 01826

(978) 452-6641



04-0329

Liberty Mutual Group

Central Recovery Unit
15 Riverside Road
Weston, MA 02493
Phone 800-762-5026
Fax 781-642-6278

June 27, 2003

Attorney George Malliaros

sent via fax to 978-970-2461

Claim #: 116-312663
Insured: Bay State Industrial Welding

Employee: Edward McCarthy
Injury Date: 3/9/2001

Dear Attorney Malliaros:

Thank you for taking the time to speak with me today, it was a pleasure. Please allow this letter to serve as an updated notice of the outstanding workers compensation lien.

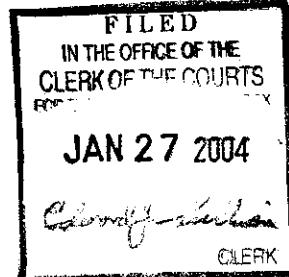
TO DATE, the total outstanding lien is \$132,573.17. This is comprised of \$98,309.77 in indemnity and \$34,263.40 in medical payments.

Please fax a copy of the complaints filed on the third party case once completed. Please feel free to call should you require any assistance from me.

Yours truly,

Kim Celorier

Kim Celorier
Recovery Specialist III
Extension 27322



Commonwealth of Massachusetts
MIDDLESEX SUPERIOR COURT
Case Summary
Civil DocketMICV2004-00329
McCarthy v McLane Company, Inc. et al

File Date	01/27/2004	Status	Disposed: remanded to District Court (drem)		
Status Date	02/20/2004	Session	L2 - Cv time-stan 2 (Lowell)		
Origin	1	Case Type	B20 - Personal Injury-Slip&Fall		
Lead Case		Track	F		

Service	04/26/2004	Answer	06/25/2004	Rule 12/19/20	06/25/2004
Rule 15	06/25/2004	Discovery	11/22/2004	Rule 56	12/22/2004
Final PTC	01/21/2005	Disposition	03/22/2005	Jury Trial	Yes

PARTIES

Plaintiff Edward A. McCarthy Active 01/27/2004	Private Counsel 315940 George M Malliaros 1794 Bridge Street Suite 22B Dracut, MA 01826 Phone: 978-452-6641 Active 01/27/2004 Notify
---	---

Defendant McLane Company, Inc. Served: 02/13/2004 Served (answr pending) 02/13/2004	Private Counsel 083520 Wesley S Chused Looney & Grossman 101 Arch Street Boston, MA 02110 Phone: 617-951-2800 Fax: 617-951-2819 Active 02/20/2004 Notify
---	--

Defendant Construction Management Technology Served: 02/13/2004 Served (answr pending) 02/13/2004	
---	--

ENTRIES

Date	Paper	Text
01/27/2004	1.0	Complaint & civil action cover sheet filed
01/27/2004		Origin 1, Type B20, Track F.
02/11/2004		Pleading, Summons with Return of Service re: Defendants, McLane Company, Inc. and Construction Management Technology, returned to George M Malliaros, Esq.: An Affidavit by the Attorney on acceptance of service along with a return receipt is required for out-of-state Defendants
02/13/2004	2.0	Affidavit of compliance with long-arm statute with proof of service on out of state defendant McLane Company, Inc., Construction Management Technology

Commonwealth of Massachusetts

MIDDLESEX SUPERIOR COURT

Case Summary

Civil Docket

MICV2004-00329

McCarthy v McLane Company, Inc. et al

Date	Paper	Text
02/20/2004	3.0	Notice for Removal to the United States District Court filed by Defendant, McLane Company, Inc.

EVENTS

MIDDLESEX, ss.

Commonwealth of Massachusetts

SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

In testimony that the foregoing is a true copy on file
and of record made by photostatic process. I hereunder
set my hand and affix the seal of said Superior Court
this 20th day of February 2004.

Deputy

Assistant Clerk